

MINUTES

BOARD OF ADJUSTMENT

TOWNSHIP OF BERKELEY HEIGHTS, NEW JERSEY

Regular Meeting

January 22, 2015

The Regular Meeting of the Board of Adjustment was called to order at 7:30 PM in the Public Meeting Room.

It was confirmed that the meeting was being held in conformance with all regulations of the SUNSHINE LAW and proper notice had been given to the Courier News; also, the Agenda had been posted in Town Hall, Board Office, and supplied to the Township Clerk at least forty-eight hours prior to the meeting. The Agenda items will not necessarily be heard in the order listed and the meeting will not continue significantly past 10:30 PM.

Roll Call:

Members present were Mr. Sullivan, Mr. Miller, Mr. Boyer, Mr. Smith, Mr. Siburn, Mr. Henry, Mr. Nappi, Mr. Delia and Mr. Sylvester. Mr. Daniel Bernstein, Board Attorney, was also present.

Executive Session

The Board entered into Executive Session at 7:33 p.m. on the motion of Mr. Miller, seconded by Mr. Siburn and carried 7-0 for the purpose of discussion of pending litigation.

The Board returned to Public Session at 7:38 p.m. on the motion of Mr. Siburn, seconded by Mr. Boyer and carried 7-0.

Applications for Review:

App.#1-15: Elyse A. Tortoriello, 120 Baker Avenue, Block 903, Lot 14 (R-15 Zone)

The proposal is to remove a detached one car garage with an attached carport and replace it with a new two car, detached garage (22' x 24' x 16' high). The existing garage and carport do not comply with accessory setback requirements; the proposed garage would be placed in the same location. Relief is needed from Section 6.1.1B "Schedule of General Regulations" for insufficient side and rear yard setbacks. (Because of the proposed 16' garage height, the 10'

required setbacks for the side and rear yards would be increased to 11'.) Existing non-conforming issues are lot area, lot width, lot depth, principal front and rear yard setbacks, existing building, other, and total lot coverage, existing shed sizes, existing shed setbacks and driveway off-set from property line. The existing carport, which would be removed, is a non-permitted accessory structure.

Elyse Tortoriello and Anthony Priore were sworn. Mr. Priore stated that the reason they are before the Board is that they have an old garage that is outdated and falling down. They want rebuild the structure using the same footprint. At present it is a single car garage with a lean-to and they want to build a two car garage. There will be no increase in impervious coverage.

Mr. Priore presented Exhibits A-1 through A-5 – photographs showing the side view of the garage, the view from the neighbor's driveway showing the side of the garage and its proximity to the neighbor's property and distance from the property line, the front view showing the front of the garage with one door and the lean-to, and the back of the garage showing the proximity to the neighbor behind them and the rear property line.

In response to questions from the Board, Mr. Priore stated that the height of the existing structure is 13½' and they are proposing 16' for the new structure. He would like to put car lift in the garage that is why they want the extra height. There will be no storage above the garage, the roof shingles and vinyl siding will match the existing house, and the garage will be used for one car and storage of seasonal items. The existing non-conforming shed is 120 square feet. The shed is used to store the lawn mower, leaf blower and other equipment but those could be relocated. The applicant would be willing to take down the illegal shed and come back for a permit to replace it.

Open to Public

The hearing was opened to the public for comments or questions regarding the application. There were no members of the public who had questions or comments.

Discussion took place with regard to the shed. The Board members did not have any objection to the shed remaining.

A motion was made by Mr. Boyer, seconded by Mr. Siburn, with respect to App.#1-15: Elyse A. Tortoriello, 120 Baker Avenue, Block 903, Lot 14 to approve the application with variances, subject to the conditions as discussed and further

subject to the standard conditions that shall be set forth in a Resolution of Memorialization to be adopted by the Board. The voice vote was unanimous with Mr. Sullivan, Mr. Miller, Mr. Boyer, Mr. Smith, Mr. Siburn, Mr. Henry and Mr. Nappi voting in favor.

App. #32-14: Ronnie & Emilie Nieves, 25 Liberty Avenue, Block 2004, Lot 2 (R-15 Zone)

Proposed additions to house on a corner lot including a new two story addition to the rear of the existing house, a new second story addition over the existing first story, a two story addition which would connect the existing detached garage to the principal house, and a second story addition over the existing garage. The proposal would also change the frontage of the house from Wardle Avenue (existing) to Liberty Street (proposed). The proposal includes a wrap-around porch/deck, covered, on the two street-front sides of the house and a 10' x 21' deck attached to the rear. Relief is needed from Section 6.1.1B. "Schedule of General Regulations" for 1) exceeding the permitted building coverage of 15%, 2) exceeding the 10% permitted "other" coverage, 3) exceeding the 25% permitted total lot coverage, 4) encroaching into the 50' required principal front yard setbacks for both Wardle Avenue and Liberty Street, 5) encroaching into the required rear yard setback, 6) encroaching into the required side yard setback (measured to the existing garage). Relief is also needed from Section 3.1.8 "Decks" for insufficient rear yard setback and Section 8.1.1B for expanding a nonconforming building. Existing nonconforming issues are lot area, lot width, lot depth, existing coverage ratios, existing principal and accessory setbacks.

Emilie Nieves and Ronnie Nieves were sworn. Albert Anikwe, architect, was sworn, gave his educational and professional background and was accepted as an expert witness.

Mr. Nieves stated that they are proposing a two story addition to the rear of the home that would include a new foundation and connection of the existing detached garage to the house.

Mr. Anikwe presented Exhibit A-1 – photos of the site showing the distance between the properties and the relationship between the existing building and the adjacent properties. He stated that the front door will face Liberty Avenue and the front of the home will have a wrap-around covered porch that will be 5' wide. There will also be a deck on the back of the house and linkage between the home and the existing garage. The deck will comply with the code except for the rear yard setback for which relief is being sought. The addition connecting the primary dwelling to the garage will be a two level structure with a balcony on the second floor and another entrance to the home through a mudroom on the first

floor. The proposed addition over the garage will be used as a study. The access to that second floor will be through the primary house and there will be no separate entrance. The existing impervious coverage is 29.75% and the proposed is 39.43%.

Discussion took place regarding the proposed impervious coverage and the Board's concerns about the coverage was noted as being significant. It was suggested that the detached garage be removed and replaced with a garage attached to the house and the proposed breezeway be eliminated. The driveway can be shortened and that would reduce the impervious coverage and create a backyard.

Mr. Anikwe stated that the applicant has been told that demolition of the existing garage would be very expensive but they are receptive to the idea of having the garage closer to the house.

Open to Public

The hearing was opened to the public for comments or questions regarding the application.

Jeff Barnerin, 20 Wardle Avenue, was sworn and stated that he appreciates the Board's questions about the application. He said he is in favor of improving the neighborhood but is concerned about the proposed height of the structure. He thinks that the 29' height will be different from most of the other houses. He noted that the plans show a series of rooms in the basement with a full bath and he is worried about how that will be used. Mr. Barnerin also stated that the streets in the this neighborhood are small and not full sized so he is concerned about whether the roads can handle the equipment needed during construction and safety of the children in the neighborhood.

The hearing of this application was carried to the February 26, 2015 meeting of the Board with no further notice required. The revised plans will be provided to the Board office by February 16.

--CARRIED FROM NOVEMBER 13, 2014, WITHOUT FURTHER NOTICE:

App.#11-14: 174 Snyder Ave. BH, LLC, 174 Snyder Avenue, Block 801, Lot 50 (R-15 Zone)

Seeking a d(1) use variance for a two-story residential dwelling built in 1910 and located in the R-15 single family zone which has been operating as a four-family home. The applicant and owner of the property would like to undertake interior

improvements, most notably a relocation of the existing laundry facilities from the interior living area on the second floor to the attic area above the second floor units. Other changes include new exterior windows and removal of the existing Bilco door. The existing shed and garbage enclosure will be relocated to comply with the setback requirements or removed entirely. Relief is also needed from Section 8.1.1B.1 "Expanding a nonconforming use" due to the interior expansion into the existing attic space for use as a utility room. Existing nonconforming issues are principal use; principal front-yard setback; existing "other" coverage of 22.44%, which includes the 800 sq. ft. stone driveway (allowed: 10%); and existing shed (which encroaches into the rear-yard setback).

Joseph Murray, attorney for the applicant, stated that the primary relief being sought is a certification that the existing site is a pre-existing use. The alternate relief is a use variance. He has filed two legal memos with the Board relating to the pre-existing use. Mr. Murray reviewed existing case law that supports the contention that the use as a four-family dwelling predated the 1937 zoning ordinance and that it was not abandoned or changed. He noted that if the applicant does not succeed on that level they intend to produce evidence that the applicant is entitled to a use variance for the four-family use.

Mr. Murray further stated that the applicant relied upon the seller's representations when he purchased the property and at no point was he aware that the use of the structure as a four-family house was illegal. Mr. Murray discussed the theory of estoppel whereby the municipality should have required compliance with the ordinance. He stated that the applicant has a family and wants to eventually live in the house and to live off the rental opportunity.

Mr. Bernstein noted that the case being presented is for non-conforming pre-existing use. The Board does not consider estoppel – that claim would be against the Township not the Board of Adjustment.

Tom Potter, architect, was sworn, gave his educational and professional background and was accepted as an expert witness. Mr. Potter stated that his office created the existing plans and documented the existing conditions. He reviewed the existing plans and prepared construction drawings for rehabilitation of the building. The objective of the plans was to restore the exterior of the building and to bring it up to date with no expansion of the exterior footprint. The exterior of the building will receive new windows, new roof and will be made maintenance-free.

Mr. Potter noted that the chimney on the building looks like early 1900s construction. There is no front door and the entrance is in the back of the

building which is not unusual in a multi-family dwelling. It was their observation that this was a four family apartment type building and the objective was to freshen up the interior and improve the layout. The plans included proper wall insulation and all the mechanical, electric and plumbing equipment were to be brought up to code. The location of the primary functions such as kitchens, bathrooms and living space will remain the same. The tenants now have to use the bilco door to access the basement to do laundry and the entire facility is being served by a single furnace. The proposed improvements would give each tenant their own heating and cooling equipment and their own laundry facility. Mr. Potter indicated on Exhibit A-4 the location of the bilco door on the right side of the building. He stated that the goal was to improve the quality of the structure, not to change its use.

In response to questions from the Board, Mr. Potter explained how the basement is accessed through the bilco door and a ladder from one of the apartments. There are historic forensic experts who could analyze the structure to determine the age of the chimney and existing facilities. In his experience he has not seen a single-family or two-family home that did not have a front door. Mr. Potter stated that there is a foyer area on the first floor with a door to the right and the left and the second floor has a landing that serves the two apartments on that floor. It would not have been uncommon for the apartments to have been used as two-bedroom units but the proposal now is to have four one-bedroom apartments.

In response to questions from Mr. Mistretta, Mr. Potter stated that the basement slab is being lowered by 1' 2" to provide additional headroom. The attic is presently accessible by semi-finished steps and it stretches over the top of the two apartments. The proposal is to place the laundry and utilities for each of the second floor tenants in the attic with separate stairs for each tenant.

Open to Public

The hearing was opened to the public for comments or questions regarding Mr. Potter's testimony.

Alan Brunt, 176 Snyder Avenue, asked if there is going to be a limit to the number of people who will be in each apartment.

Mr. Potter said he could not answer that question. The design is for one-bedroom apartments.

Mr. Bernstein noted that there are health codes that limit the number of people. He does not know if the zoning officer would go into the building unless there is a complaint.

Wei Ping Deng, 182 Synder Avenue, was sworn and stated that when she moved into her house there was only the previous owner and family members living there. There were four members of one family and they only parked two or three cars. That was the situation until they sold the house to the new owner. The house was used by members of a single family and this will now change to four different families and that will change the environment dramatically. She does not know how they will park their cars.

In response to questions Ms. Deng stated that when she moved into her house in 2009 the applicant's house was occupied by Dora Pagano, her daughter, her daughter's husband and one child. Ms. Deng indicated the location of her property on the drawing and stated that she is concerned about safety of the children walking to school through that area.

Mr. Brunt stated that he has an easement and is allowed to go in and out through the applicant's property. He indicated the location of his house on the plan.

Michael Tobia, Planner, was sworn and accepted as an expert witness.

Mr. Tobia referred to Exhibit A-2 showing the front elevation of the property and stated that the building appears to be in relatively good shape. He noted the absence of a front door and the location of what used to be four mailboxes and the driveway that is shared by three homes. Referring to Exhibit A-3, Mr. Tobia indicated the location of Snyder Avenue, the front of the house, the driveway and the bilco door. He also noted the one electric meter on the house which means the residents shared electric. Mr. Tobia noted on Exhibits A-4 and A-5 the rear of the house with the back door that is the only way into the house. There are staircases that go to the first floor units and to the second floor units. On Exhibit A-6, Mr. Tobia indicated the location of three designated parking spaces off Snyder Avenue with a curb cut where four cars could be parked.

Mr. Tobia presented photographs marked as Exhibit A-7 showing the interior of the house. He stated that there is no evidence that this was ever a single family home. The photograph of the basement shows four gas meters. The photographs also show two interior stairwells that provide access to the second level and the attic. Mr. Tobia further stated that the photographs of the individual units show old cabinets and appliances in the kitchens, old tile and damage to

the ceilings. The photographs show four kitchens, four bathrooms and four entrances to the four apartments.

Mr. Tobia stated that the heating is by a central system. He believes there is ample parking on the site. Mr. Santorella is interested in making this a good investment property and there will be sufficient demand for the apartments so he will have a good choice of tenants.

Mr. Boyer left the meeting (10:00 p.m.).

Discussion took place regarding the parking and the private easement that is not shown on the survey. Mr. Tobia will look into the easement and advise.

Mr. Tobia described the neighborhood that is mostly single family homes. There is a light industrial zone across the street and nearby there is a four unit townhouse project. The railroad tracks are also nearby and the property is about $\frac{3}{4}$ of a mile from the train station. The tax records show that this building was built in approximately 1910. The first ordinance appears in 1937 and from that time on the property is in a single family zone. Four family homes were never permitted. When a legally existing use predates the ordinance that means it is allowed to continue to exist. When a non-conforming use is abandoned it must comply with zoning. In this case there was no abandonment of the four family use. Inspection and tax assessor records confirm that the house has existed as a four family home for decades. There is no evidence that this was ever a single family home. Mr. Tobia stated that for those reasons he believes the certification test is easy to support and that is the fair thing to do with the property.

Discussion took place regarding the photographs of the interior of the building. It was noted that the gas meters look like they were installed after 1937, there are fans that look like 1980-1990 vintage, modern faucets and newer cabinets.

Open to Public

The hearing was opened to the public for comments or questions regarding Mr. Tobia's testimony.

Wei Ping Deng asked how many parking spaces will be provided.

Mr. Tobia indicated on the plans the locations where parking would be provided.

Ms. Deng said she is concerned about the safety of children walking to school along that sidewalk. She thinks this will be a dramatic change to the neighborhood because there used to be three adults and one child living in the house and now there will be four families.

Tony Santorella, applicant, previously sworn, stated that he is the present owner of the property with his wife. He had an opportunity to invest in Berkeley Heights and moved forward based on how it was described to him. He had no reason to believe he could not use the property as a four-family dwelling. He wanted to bring this property to a high quality and does not intend to sell. He engaged a high quality architect and never tried to cut any corners. He is not a builder, a contractor, or a property management company, just a person with wife and children. At the time he purchased the property he was not aware that there were any zoning issues. This has been a very big financial burden. He intends to be an active landlord and it is his intention to make this a beautiful piece of property that will enhance the neighborhood.

The hearing of the application was carried to the February 12, 2015 meeting with no further notice required. Mr. Murray advised that the applicant will agree to an extension and asked that the Board members read the documentation that he has provided.

Adoption of Minutes

January 8, 2015 Reorganization Meeting
January 8, 2015 Executive Session

A motion was made by Mr. Siburn, seconded by Mr. Nappi, and carried by unanimous voice vote to adopt the minutes of the January 8, 2015 Reorganization Meeting and the January 8, 2015 Executive Session as presented.

Correspondence

Memorandum dated January 13, 2015, from Tom Bocko, Zoning Officer, addressed to Dan Bernstein, Esq., Bernstein & Hoffman, on the subject of zoning coverage.

The correspondence was tabled for discussion at the next meeting of the Board.

Adjournment:

A motion was made by Mr. Miller, seconded by Mr. Delia, to adjourn the meeting. The voice vote was unanimous and the meeting was adjourned at 11:00 PM.

Regina Giardina, Secretary Pro Tem